

Administrative Accountability-II Mechanics for Implementation*

By Mastoid Hasan

In Finland or Sweden there are Supreme Administrative Courts similar to the French Conseil d'etat with its hierarchy of courts. In France the main features of the methodology of the Administrative courts are as follows:

- 1) Their procedure is inquisitorial, ie administrative court judges are not just umpires, they go into the propriety of the administrative decision and collect information through their own rapporteurs, if necessary – thereby reducing the possibility of injustice on account of lack of resources on the part of citizens to engage expensive lawyers, or in getting relevant information from government departments.
- 2) Their judicial review is comprehensive: the court not goes into the facts and law, but also into the motive, be it personal, political or social. The onus of proving the bona fides lies with on the administrative authority.
- 3) The court insists that subjective satisfaction must be justified externally, that administrative decisions must be justified face-to-face.
- 4) The court's jurisprudence is creative and dynamic – that is, the court is not bound by precedent or bogged down in jurisdictional issues. The underlying principle is to secure a proper, ethical and decent standard of administrative behaviour – “administration shall not lie”.
- 5) The Conseil is marked for its independence and is fearless even though it is constituted within the civil service structure.
- 6) The Conseil can award damages against the state.

The success of this system lies in the fact that the Conseil is part of the executive, coming directly under the prime minister. Where doubts or difficulties arise as to jurisdiction in France, there is a Tribunal of Conflicts which is composed of representatives of the Conseil and the judiciary in equal numbers under the presidentship of the Grade des Sceaux (minister of justice) who is also president of the Conseil d'etat. He normally does not attend, but if there is a deadlock he uses his vote. It may appear improper for a minister to have this power, but this is probably the best solution as no independent chairman could be drawn from the judiciary.

When we consider the tremendous expansion of organized activity that has taken place in all walks of life in Pakistan within few years we realize that the procedures (in all their

* Dawn Nov. 04, 1996

glorious detail) are, by and large not defined because by the time one gets round to a definition, further modifications are required. It would appear that we just simply cannot catch up with ourselves.

The concept of continuous (as opposed to periodical) evaluation imposes tight administrative discipline can never be enforced by a court of law. This discipline can only be enforced by a branch of the executive armed with the authority to penalize the offending official. The judgments of the Administrative Court would be enforced like declaratory decrees of the judiciary. If an official does not take cognizance and acts accordingly, his decisions may be declared null and void.

What is more important, if he persists he can be found guilty of personal fault and damages awarded against him or the state. Since such courts can act preventively they do not wait for a wrong to be committed, but make incrementally small corrections frequently. If there are half a dozen squatters, it is not so difficult a process to remove them. However, if there are a thousand, it may necessitate giving them possession and changing the law of the land.

In criminal action the citizen is the defendant and the onus lies on him to prove his innocence. In handling grievances the Administrative Court looks upon the state or a public body as the defendant and the onus lies on the state to disprove the accusation. This means the agents of government, other than ministers, cannot be prosecuted for acts related to their official duties except by virtue of a decision by the Administrative Court. Naturally, only a person full aware of administrative exigencies and rules within which it must function can do justice in providing equity and propriety. This implies specialization of a type that cannot and should not be expected from a judicial judge, what with all his current preoccupations.

In short, we need to go in for a retrofit of our concept of administrative accountability. It is only through such an approach, given our ways of working, to provide the good administrator or manager with service security by ensuring administrative accountability. The above represents a strategic approach. Naturally, the mechanics for implementation would need to be worked out. Sufficient information and competences are available in our own country to sort out transitional problems. When the rewards are so high, how can we not give this our serious attention?

(concluded)

/AdminAccount-2